

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUA FORDYCE,<sup>1</sup>  
A.K.A. BRITTANY FORDYCE

Plaintiff,

v.  
HEATHER SHIRLEY, et al.,  
Defendants.

No. 1:25-cv-00106 GSA (PC)

ORDER AND FINDINGS AND  
RECOMMENDATIONS

ORDER RECOMMENDING MATTER BE  
DISMISSED FOR FAILURE TO  
PROSECUTE AND FOR FAILURE TO OBEY  
A COURT ORDER

PLAINTIFF'S OBJECTIONS DUE IN  
FOURTEEN DAYS

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

For the reasons stated below, the undersigned will recommend that this matter be dismissed for failure to prosecute this case and for failure to obey a court order. Plaintiff will be given fourteen days to file objections to this order.

I. RELEVANT FACTS

<sup>1</sup> Plaintiff's also goes by the name "Brittany Fordyce" (see ECF No. 21 at 1) and is a transgender inmate (see ECF No. 1 at 3).

1 On November 14, 2024, Plaintiff's complaint was docketed in the Northern District of  
2 California. See ECF No. 1 at 1. Thereafter, on January 23, 2025, the matter was transferred to  
3 this District and to this Court. See ECF No. 6.

4 A. January 29, 2025, Screening Order Giving Plaintiff Opportunity to File  
5 Amended Complaint

6 On January 29, 2025, Plaintiff's complaint was screened and the Court found that it failed  
7 to state a claim upon which relief could be granted. ECF No. 10 at 7. As a result, Plaintiff was  
8 given the opportunity to file an amended complaint. Id. Plaintiff was given thirty days to do so.  
9 Id.

10 Thereafter, between January 31, 2025 and February 20, 2025, Plaintiff filed three motions  
11 for the appointment of counsel (see ECF Nos. 12, 14, 16) as well as what the Court construed as a  
12 motion for reconsideration of its denial of her motion for the appointment of counsel (see ECF  
13 No. 18). Each of these motions was denied. See ECF Nos. 13, 15, 17, 19.

14 B. March 10, 2025, Order Directing Plaintiff to Show Cause Why Matter Should  
15 Not Be Dismissed or File Amended Complaint

16 On March 10, 2025, because Plaintiff had not filed an amended complaint, nor requested  
17 an extension of time to do so, the Court issued an order directing Plaintiff to show cause why this  
18 matter should not be dismissed for failure to obey a court order. ECF No. 20 at 2. As an  
19 alternative to filing the showing of cause, Plaintiff was also given another opportunity to file an  
20 amended complaint. Id. Plaintiff was then given thirty days to take either course of action. Id.

21 To date, Plaintiff has not filed an amended complaint nor filed a request for an extension  
22 of time to do so.

23 II. APPLICABLE LAW

24 A. Federal Rule of Civil Procedure 41(b) and Local Rules 110

25 Federal Rule of Civil Procedure 41 permits this Court to dismiss a matter if a plaintiff fails  
26 to prosecute or she fails to comply with a court order. See Fed. R. Civ. P. 41(b). Local Rule 110  
27 also permits the imposition of sanctions when a party fails to comply with a court order. L.R.  
28 110.

1                   B. Malone Factors2                   The Ninth Circuit has clearly identified the factors to consider when dismissing a case for  
3 failure to comply with a court order. It writes:4                   A district court must weigh five factors in determining whether to dismiss a case  
5 for failure to comply with a court order: “(1) the public’s interest in expeditious  
6 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of  
7 prejudice to the defendants; (4) the public policy favoring disposition of cases on  
8 their merits; and (5) the availability of less drastic sanctions.”9                   Malone v. United States Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (quoting Thompson v.  
10 Hous. Auth. of City of Los Angeles, 782 F.2d 829 (9th Cir. 1986) (per curiam)). The same  
11 factors are to be considered prior to dismissal for failure to prosecute. See Ash v. Cvetkov, 739  
12 F.2d 493, 496 (9th Cir. 1984).13                   III. DISCUSSION14                   A. Rule 41(b) and Local Rules 110 Support Dismissal of This Case15                   Plaintiff’s failure to prosecute this case and move it forward by filing an amended  
16 complaint warrants a dismissal of this case. Plaintiff’s failure to comply with the Court’s order to  
17 file a showing of cause within the thirty-day period given to Plaintiff warrants a dismissal of this  
18 case as well. See Fed. R. Civ. P. 41(b) and Local Rule 110.19                   B. Application of Malone Factors Supports the Dismissal of This Case20                   1. Expeditious Resolution of Litigation; Court’s Need to Manage Its Docket21                   Plaintiff has been given sufficient time to file an amended complaint or file a showing of  
22 cause. Yet, Plaintiff has failed to do either.23                   The Eastern District Court has an unusually large caseload.<sup>2</sup> “[T]he goal of fairly24  
25                   

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<sup>2</sup> The Eastern District of California carries one of the largest and most heavily weighted  
26 caseloads in the nation. See Office of the Clerk, United States District Court, Eastern District of  
27 California, 2024 Annual Report, “Weighted Filings,” p. 35 (2024) (“[O]ur weighted caseload far  
28 exceeds the national average . . . ranking us fourth in the nation and first in the Ninth Circuit.”).  
This problem is compounded by a shortage of jurists to review its pending matters. See generally  
id. (stating 2024 Biennial Judgeship Survey recommended request for four additional permanent  
judgeships for Eastern District of California).

1 dispensing justice . . . is compromised when the Court is forced to devote its limited resources to  
 2 the processing of frivolous and repetitious requests.” Whitaker v. Superior Court of San  
 3 Francisco, 514 U.S. 208, 210 (1994) (brackets added) (citation omitted). Thus, it follows that  
 4 keeping this case on the Court’s docket when Plaintiff has not attempted to file either an amended  
 5 complaint or a showing of cause is not a good use of the Court’s already taxed resources. Indeed,  
 6 keeping this matter on the Court’s docket would stall a quicker disposition of this case.  
 7 Additionally, in fairness to the many other litigants who currently have cases before the Court, no  
 8 additional time should be spent on this matter.

9                   2. Risk of Prejudice to Defendants

10 Furthermore, because viable Defendants have yet to be identified and served in this case,  
 11 no one has put time and effort into defending against it. As a result, there will be no prejudice to  
 12 anyone other than Plaintiff if the matter is dismissed. On the contrary, dismissal will benefit any  
 13 potentially viable Defendants because they will not have to defend themselves against Plaintiff’s  
 14 complaint.

15                   3. Availability of Less Drastic Sanctions; Favored Disposition of Cases on  
 16                   Merits

17 Finally, given that Plaintiff has had sufficient time either to file an amended complaint or  
 18 a showing of cause with the Court<sup>3</sup> since Plaintiff was directed to do one or the other, given that  
 19 Plaintiff has not done either during the period she was given, but instead filed multiple requests  
 20 for the appointment of counsel, it appears Plaintiff simply does not intend to do either. Rather, it  
 21 appears that Plaintiff is choosing to abandon this case. As a result, there is no less drastic option  
 22 than dismissal. Although the disposition of cases on their merits is preferred, this matter cannot  
 23 be prosecuted without Plaintiff’s participation, nor can it be disposed of on its merits.

24                   IV. CONCLUSION

25 For these reasons, consistent with Federal Rule of Civil Procedure 41(b) and Local Rule  
 26 110, and having considered the Malone factors, the undersigned recommends that this matter be

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27                   <sup>3</sup> In 2025, the period that a litigant appearing in propria person has to file a notice of change of  
 28 address was reduced from sixty-three days to thirty days. See Local Rule 183(b)

1 dismissed without prejudice for failure to prosecute. Plaintiff will have fourteen days to file  
2 objections to this order.

3 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court shall randomly assign a  
4 District Judge to this matter.

5 IT IS FURTHER RECOMMENDED that this matter be DISMISSED without prejudice  
6 for failure to prosecute and for failure to obey a court order. See Fed. R. Civ. P. 41(b) and Local  
7 Rule 110.

8 These findings and recommendations are submitted to the United States District Judge  
9 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
10 after being served with these findings and recommendations, Plaintiff may file written objections  
11 with the Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings  
12 and Recommendations,” and it shall not exceed fifteen pages.

13 The Court will not consider exhibits attached to the objections. To the extent that Plaintiff  
14 wishes to refer to any exhibit, when possible, he must reference the exhibit in the record by its  
15 CM/ECF document and page number or reference the exhibit with specificity. Any pages filed in  
16 excess of the fifteen-page limit may be disregarded by the District Judge when conducting the 28  
17 U.S.C. § 636(b)(1)(C) review of the findings and recommendations. Plaintiff’s failure to file  
18 objections within the specified time may result in the waiver of certain rights on appeal. See  
19 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014); Martinez v. Ylst, 951 F.2d 1153 (9th  
20 Cir. 1991).

21 IT IS SO ORDERED.  
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23 Dated: April 28, 2025

24 /s/ Gary S. Austin  
25 UNITED STATES MAGISTRATE JUDGE  
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